

From: Cecil Rodrigues/R3/USEPA/US
Sent: 10/9/2012 2:37:31 PM
To: William Early/R3/USEPA/US
CC: Marcia Mulkey/R3/USEPA/US@EPA; Suzanne Parent/R3/USEPA/US@EPA; Ron Borsellino/R3/USEPA/US@EPA
Subject: Fw: Access for Cabot Inspections

Bill:

Attached below is the letter from Cabot and a quick summary of the issues raised. We are coordinating with HQ and DOJ. If you have any questions or concerns please call Suzanne Parent or me.

Cecil Rodrigues, Chief
Office of Remediation Enforcement
Office of Regional Counsel
EPA Region III
215-814-2683

----- Forwarded by Cecil Rodrigues/R3/USEPA/US on 10/09/2012 02:31 PM -----

From: Suzanne Parent/R3/USEPA/US
To: Bob.Brook@usdoj.gov, Bernadette Rappold/DC/USEPA/US@EPA
Cc: Cecil Rodrigues/R3/USEPA/US@EPA, Allison Gardner/R3/USEPA/US@EPA, Joan Armstrong/R3/USEPA/US@EPA, Karen Melvin/R3/USEPA/US@EPA
Date: 10/09/2012 12:32 PM
Subject: Access for Cabot Inspections

**DELIBERATIVE PROCESS/ENFORCEMENT SENSITIVE/ATTY WORK PRODUCT/NOT
RELEASABLE/NOT ADMISSIBLE**

Hi Bob--

I understand that Cecil discussed with you the denial of access for purposes of routine administrative inspection of two facilities operated by Cabot.

Attached is their letter from yesterday to our attorney Allison Gardner. I am cc'ing to Bernadette Rappold, director of the Special Litigation and Projects Division/OECA and our program managers.

Quick summary:

CWA 311 (oil)--They are willing to provide info on oil storage at the facilities so that EPA may know which facilities have greater than 1320 gallons onsite. Then EPA would have to show them that, because of the facility location, a release to navigable water could occur. Then, they'd consent to inspection, but only for oil; no taking pictures of other stuff.

They deny completely for other statutes because:

EPCRA 311/312--no inspection authority by statute or regulation.

Ex. 5 - Attorney Client

CAA 112(r)(1)/CAA114--EPA did not identify an extremely hazardous substance that is present at the facility in EPA's request for consensual access.

CERCLA 104--inspection authority available only to determine if there has been a release or threat of release requiring response, not to merely review chem inventories.

EPA requested the access on Tuesday, and was given access by Cabot staff, but were asked to leave later that day. Allison Gardner and outside counsel for Cabot had an email exchange in which we explained the purpose of the access and authorities and they asked for more time to review the laws. I will forward to you the email exchange next for context.

We appreciate your review and assistance.

Suzanne

Suzanne M. Parent
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 3
1650 Arch Street, Mail Code 3RC42
Philadelphia, PA 19103-2029
215.814.2630
fax 215.814.2603

----- Forwarded by Suzanne Parent/R3/USEPA/US on 10/09/2012 12:20 PM -----

From: Allison Gardner/R3/USEPA/US
To: Cecil Rodrigues/R3/USEPA/US@EPA, Suzanne Parent/R3/USEPA/US@EPA, Joan Armstrong/R3/USEPA/US@EPA, Karen Melvin/R3/USEPA/US@EPA
Date: 10/08/2012 03:40 PM
Subject: Fw: RE: Cabot Inspections

Ex. 5 - Attorney Client

See Cabot's response below. I have only had time to skim it, but that was enough to get the gist. They deny access

Allison F. Gardner
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency, Region III
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Philadelphia, PA 19103
(215) 814-2631

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-----Forwarded by Allison Gardner/R3/USEPA/US on 10/08/2012 03:39PM -----

To: Allison Gardner/R3/USEPA/US@EPA
From: "Rothschild, Lowell" <Lowell.Rothschild@bgllp.com>
Date: 10/08/2012 01:21PM
Cc: "Hutt, Jason" <Jason.Hutt@bgllp.com>
Subject: RE: Cabot Inspections

(See attached file: HOUSTON-#4178937-v3-Response_to_EPA_Inspection_Request.DOC)

Ms. Gardner –

As discussed, attached is our response; a hard copy will follow by U.S. mail. We look forward to hearing from you.

Thank you very much,

Lowell Rothschild, Senior Counsel

Bracewell & Giuliani LLP

From: Allison Gardner [mailto:Gardner.Allison@epamail.epa.gov]
Sent: Thursday, October 04, 2012 11:03 AM
To: Rothschild, Lowell
Subject: RE: Cabot Inspections

Lowell,

Thank you for your message. While EPA understands Cabot's desire to digest and analyze EPA's authority to access the facilities, the Agency must treat a request for additional time as an effective denial of access for the inspections that were to have occurred this week. However, as I mentioned during our telephone conversation on Tuesday, EPA continues to be interested in inspecting some active fracking sites and would like to continue a dialogue with Cabot about access to these kinds of sites. To that end, I look forward to hearing from you on Monday.

Allison

Allison F. Gardner
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From: "Rothschild, Lowell" <Lowell.Rothschild@bgllp.com>
To: Allison Gardner/R3/USEPA/US@EPA
Date: 10/03/2012 06:16 PM
Subject: RE: Cabot Inspections

Allison –

Thanks very much for your email and for EPA's flexibility regarding the sites it wishes to inspect. Unfortunately, even with a limited number of sites, we still have the full range of Clean Air Act, Clean Water Act, EPCRA, and CERCLA issues to digest and analyze. We want to, and intend to, respond as soon as reasonably possible regarding access, but cannot do so, reasonably, by 9:00am tomorrow. Given our schedules on the one hand and EPA's ability on the other hand to deploy its resources elsewhere in the interim, I would propose that we provide you with a response by Monday. Please let us know if you have any concerns with that timing.

Thanks very much,

Lowell Rothschild, Senior Counsel
Bracewell & Giuliani LLP

From: Allison Gardner [<mailto:Gardner.Allison@epamail.epa.gov>]
Sent: Wednesday, October 03, 2012 4:04 PM
To: Rothschild, Lowell
Subject: RE: Cabot Inspections

Lowell,

Thanks for your email. You are correct -- these are simply routine inspections. Also, since the inspectors will only be available through tomorrow, EPA is reducing its request for access to just the Polanski and Bunnell sites.

I completely understand that, given the amount of information I provided to you this morning, it takes some time to review and discuss. As I mentioned when we spoke by phone yesterday, EPA plans to have its inspectors in the Susquehanna County area through Thursday. Therefore, I ask that you reply regarding access by 9:00 am tomorrow (Thursday) morning at the latest. I'm sure you understand that if EPA is unable to secure access for the Polanski and Bunnell sites, it would like to deploy its resources elsewhere to avoid wasting time and money.

Thank you.

Allison

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From: "Rothschild, Lowell" <Lowell.Rothschild@bgllp.com>
To: Allison Gardner/R3/USEPA/US@EPA
Date: 10/03/2012 03:45 PM
Subject: RE: Cabot Inspections

Allison --

Thanks very much for your message and your email earlier this morning outlining in greater detail EPA's proposed inspections and the bases therefore. As I'm sure you'll understand, the breadth of the provisions EPA has cited (CAA 112(r)(1), 114(a)(1) and 114(a)(2); CWA 311(j) and 311(m); 40 C.F.R. Part 112; EPCRA 311, 312 and 325; and CERCLA 104(e)) is requiring a fair amount of internal discussion. It will be a little while before we can appropriately respond to EPA's request. Since we understand that EPA's request is just for a routine inspection and EPA has no reason to believe that Cabot is currently in noncompliance with any of these provisions, we presume that this will not be a problem; if we are wrong, or if EPA has any information suggesting that there may be a potential noncompliance, please let us know at your earliest convenience, so that we can, among other things, take all necessary and immediate steps to address EPA's concerns.

Thanks very much,

Lowell Rothschild, Senior Counsel
Bracewell & Giuliani LLP

From: Allison Gardner [<mailto:Gardner.Allison@epamail.epa.gov>]
Sent: Wednesday, October 03, 2012 2:38 PM
To: Rothschild, Lowell
Subject: RE: Cabot Inspections

Lowell,

Is there any word from Cabot as to whether they will grant access for the inspections which we have been discussing. Please let me know as soon as you are able. Thank you.

Allison

Allison F. Gardner
Senior Assistant Regional Counsel
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(215) 814-2631

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